IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3577 of 2007()

CMP.3937/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM
CRIME NO.665/07 OF HARBOUR POLICE STATION

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PETITIONER: R.C.OWNER/CLAIMANT

MRS. ROSY, AGED 53, W/O. JOSHY,
1/649, NEDUMPARAMBIL HOUSE, KANNADIKKADU,
MARADU P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.C.P.UDAYABHANU
SRI.RAJ.C.R.

RESPONDENTS: COMPLAINANT

STATE, REPRESENTED BY
THE S.I. OF POLICE, HARBOUR POLICE STATION,
KOCHI CITY, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3577 of 2007

Dated this the 4th day of December 2007

O R D E R

The petitioner has come to this court with this petition under Section 482 Cr.P.C aggrieved by an order passed in an application under Section 451 Cr.P.C filed by her. A vehicle belonging to her - Tavera Motor cab bearing registration No.KL 7 BA 1370 was seized by the police and was produced before the learned Magistrate. The petitioner applied for release of the vehicle under Section 451 Cr.P.C. That application was dismissed on the ground that proceedings under Section 67B of the Kerala Abkari Act have been initiated and the vehicle has been produced later before the Assistant Excise Commissioner, Ernakulam.

2. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor, after taking instructions, submits that no proceedings under Section 67B of the Kerala Abkari Act has commenced yet. No notice was issued to the petitioner, the owner of the vehicle.

3. I am, in these circumstances, satisfied that subject to appropriate conditions, the vehicle can be directed to be released to the petitioner herein. Appropriate safeguards can be

insisted. The jurisdiction of the authorised officer under Section 67B of the Kerala Abkari Act to proceed further can be protected. The consequence of the vehicle being exposed to sun and rain and the consequence of damage and deterioration can be avoided by issuing appropriate direction under Section 482 Cr.P.C.

4. This petition is in these circumstances allowed. The impugned order is set aside. The learned Magistrate shall release the vehicle to the petitioner on the following terms and conditions:

i) The petitioner shall produce all relevant documents before the learned Magistrate to show that the petitioner is the owner of the vehicle entitled to possession of the same.

ii) The petitioner shall execute a bond with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate for such amount equal to the value of the vehicle as may be determined by the learned Magistrate. The learned Public Prosecutor prays that bank guarantee may be insisted; but I am satisfied in the facts and circumstances of this case that it is sufficient to insist on execution of a bond with two solvent

sureties. The learned Magistrate must zealously ensure that the sureties offered are sufficient and solvent.

iii) The petitioner shall, in the bond to be executed by him, undertake to produce the vehicle before the court or any other officer or authority under Section 67B of the Kerala Abkari Act as may be directed by the learned Magistrate from time to time.

iv) The condition of the vehicle shall be noted when the same is handed over and the petitioner shall keep the vehicle in the same condition in which it is handed over to the petitioner.

5. If the petitioner executes the bond as required, the learned Magistrate shall issue directions for release of the vehicle and the vehicle, in whosesoever possession it may be, shall thereafter be released to the petitioner.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007